



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0147]

Qualification of Drivers; Skill Performance Evaluation; Virginia Department of Motor Vehicles Application for Renewal Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew an Virginia Department of Motor Vehicles (DMV) exemption on behalf of truck and bus drivers who are licensed in the Commonwealth of Virginia and need a Skill Performance Evaluation (SPE) Certificate from FMCSA to operate commercial motor vehicles (CMV) in interstate commerce. The exemption enables interstate CMV drivers who are licensed in Virginia and are subject to the Federal SPE requirements under 49 CFR 391.49 to continue to fulfill the Federal requirements with a State-issued SPE and to operate CMVs in interstate commerce anywhere in the United States.

DATES: This decision is effective July 8, 2018, and will expire July 8, 2023, and may be renewed. Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System

(FDMS) Docket No. FMCSA-2013-0147 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Nolan, Office of Carrier, Driver and Vehicle Safety, Medical Programs Division, 202-366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs) for no longer than 5 years if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute allows the Agency to renew exemptions at the end of the 5-year period.

On July 8, 2014, FMCSA granted Virginia a 2-year exemption that enables interstate CMV drivers licensed in Virginia who are subject to the Federal SPE requirements under 49 CFR 391.49 to fulfill the Federal requirements with a State-issued SPE (79 FR 38659).

Subsequently, a request for exemption renewal was received, and granted for a 2-year period, beginning July 8, 2016 and ending on July 8, 2018 (81 FR 44674).

At the time the first exemption was granted, the term of temporary exemptions was limited by statute to a maximum of 2 years. However, on December 4, 2015, Congress enacted the Fixing America's Surface Transportation (FAST) Act, which now allows an exemption to be granted for a period of 5 years (49 U.S.C. 31315(b)(2)) if FMCSA finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Virginia has consistently maintained the statutory requirements associated with 49 U.S.C. 31136(e) and 31315 for their SPE program. Therefore, the Agency believes that extending the exemption period to a 5-year period will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

The requirements of the exemption were outlined in the prior notices and will therefore not be repeated. Virginia has established its own SPE program that is essentially identical to the current FMCSA SPE program to include an application process modeled on the FMCSA process. In addition, State personnel who have completed SPE training identical to that of FMCSA personnel currently administer the SPE program and conduct the skill evaluation according to the same procedures and testing criteria used by FMCSA. If the driver passes the skill evaluation, the State issues the SPE Certificate. Virginia maintains records of applications, testing, and certificates issued, which are available, as required, for periodic review by FMCSA. On behalf of CMV drivers licensed in the Commonwealth of Virginia, the State requested renewal of the exemption from 49 CFR 391.49 concerning FMCSA's SPE

Certificate process for drivers who have experienced an impairment or loss of a limb.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that granting this exemption is not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the Virginia DMV exemption.

III. Basis for Renewing Exemption

The Agency's decision regarding this exemption is based on the fact that Virginia's SPE program is essentially identical to the current FMCSA program. Virginia continues to adhere to the application process modeled on the FMCSA process. State personnel who conduct the skill evaluation complete the same training as FMCSA personnel conducting the test and follow the same procedures and testing criteria used by FMCSA. FMCSA has conducted ongoing monitoring and SPE program reviews and Virginia continues to maintain records of applications, testing, and certificates issued for periodic review by FMCSA. At the time, Virginia DMV submitted its request for exemption renewal to the Agency, it had issued 29 new and 48 renewal SPE Certificates. Based upon FMCSA's analyses of the applications and the program as a whole, FMCSA has determined that no safety vulnerabilities are associated with Virginia's renewal request. The renewal of the exemption for a 5-year period is granted.

Consequently, FMCSA has concluded that renewing the exemption allows the

Virginia SPE program to achieve the level of safety required by 49 U.S.C. § 31315.

If a Virginia-licensed driver would prefer not to opt for the streamlined SPE process, the driver may still apply for an FMCSA-issued SPE. However, FMCSA may still exercise its discretion and call upon Virginia DMV to provide assistance in conducting the road evaluation needed to complete an SPE application, depending on the volume of applications.

IV. Conditions and Requirements:

The FMCSA grants the renewal of the exemption to allow the Virginia DMV to conduct SPE's on drivers who have experienced an impairment or loss of a limb and are licensed in the Commonwealth of Virginia. The following terms and conditions apply to the State and any drivers who receive a State-issued SPE certificate:

- Virginia must establish and maintain its own SPE program that is essentially identical to the current FMCSA program.
- The State must maintain an application process modeled on the FMCSA process and submit information concerning the application process to FMCSA's Medical Programs Division for review, as required.
- State personnel who conduct the skill test must complete SPE training identical to that of FMCSA personnel currently administering the Federal SPE program.
- The skill evaluation and scoring for the SPE must be done using the same procedures and testing criteria used by FMCSA.
- Virginia must maintain records of applications, testing, and certificates issued for periodic review by FMCSA.

- Virginia must submit a monthly report to FMCSA listing the names and license number of each driver tested by the State and the result of the test (pass or fail).
- Each driver who receives a State-issued SPE must carry a copy of the certificate when driving for presentation to authorized Federal, State, or local law enforcement officials.

V. Preemption

During the period the exemption is in effect; no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption. An exemption granted under the authority of 49 U.S.C. 31315(b) preempts State laws and regulations that conflict with or are inconsistent with the exemption. The decision to grant Virginia's request amounts to automatic Federal ratification of the State issued SPE Certificate and therefore prohibits other jurisdictions from requiring a separate FMCSA-issued SPE. The State-issued certificate must be treated as if it had been issued by FMCSA. Virginia-licensed drivers who receive the State-issued SPE are allowed to operate CMVs in interstate commerce anywhere in the United States.

VI. Conclusion

Virginia has consistently maintained the statutory exemption requirements associated with the Skill Performance Evaluation Certificate program. Therefore, in accordance with 49 U.S.C. 31136(e) and 31315, this exemption will be valid for five years unless revoked earlier by FMCSA.

The Agency does not intend its decision to pressure other States to take action to implement State-run SPE programs. Virginia is the first State to submit an application on behalf of its drivers to provide an alternative to the Federal SPE process. Other States are welcome to make similar applications if they believe it is appropriate to do so and they have the resources to meet terms and conditions comparable to those provided in this exemption.

Issued on: July 24, 2018.

Raymond P. Martinez,

Administrator.

[FR Doc. 2018-16225 Filed: 7/27/2018 8:45 am; Publication Date: 7/30/2018]